IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23269 of 2004

Between:

Penagati Rambabu S/o Late Adinarayana
F.P. Shop No. 41 Tummapala Village Gavarapeta Veedhi Anakapalli Mandal, Visakhapatnam District

..... PETITIONER

AND

1 The Revenue Divisional Officer, Visakhapatnam
2 The Mandal Revenue Officer, Anakapalli, Visakhapatnam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the proceedings issued by the 1st respondent vide R.C. No. 4241/2004/C, dt 29-11-2004 as illegal, unjust arbitrary violation of principles of natural justice and against to the provisions of the Andhra Pradesh Public Distribution System Control Order, 2001 and consequently direct the respondents to continue the petitioner as Fair Price Shop Dealer of Shop No. 41 of Tummapala Village, Gavarapeta Veedhi Anakapalli Mandal, Visakhapatnam District Gavarapeta Veedhi, Anakapalli Mandal, Visakhapatnam District as usual.

Counsel for the Petitioner: MR.B.DEVANAND

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court, at the stage of admission, made the following:

ORDER:

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Petitioner is a fair price shop dealer. His authorization was suspended by the 1st respondent through proceedings, dated 29.11.2004, on the ground that proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') have been initiated against the petitioner. This writ petition is filed alleging that the 1st respondent did not apply his mind to the facts of the case, and though initiation of proceedings under Section 6-A of the Act is one of the factors to be taken into account by the appointing authority for ordering suspension of authorization, independent application of mind has to be there. Reliance is placed upon a Judgment of this Court in ***GUNDLA RAMA MURTHY V. THE DISTRICT COLLECTOR, VIZIANAGARAM.***

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

On the basis of a report said to have been submitted by the Deputy Tahsildar (Enforcement), and the seizure of commodities effected by him, the 1st respondent issued proceedings, dated 26.11.2004, entrusting the distribution of the commodities in the fair price shop held by the petitioner, to another dealer. Challenging the same, W.P.No.22192 of 2004 was filed. This Court disposed of the writ petition on 02.12.2004, observing that such a course of action is impermissible.

The 1st respondent suspended the authorization of the petitioner through proceedings, dated 29.11.2004. The only basis for this, is the report, dated 22.11.2004, said to have been submitted by the Deputy Tahsildar. It is observed that proceedings under Section 6-A of the Act are initiated before the Joint Collector, on the basis of the report of the Deputy Tahsildar. The 1st respondent did not refer to any act or omission on the part of the petitioner. On the other hand, he took the view that the allegations, referred to in the report, dated 22.11.2004, are proved. He has virtually rendered the result of the proceedings, be it those under Section 6-A of the Act, or the one to be initiated against the petitioner for cancellation of authorization, a foregone conclusion. Such a course of action is impermissible in law. The actual involvement of the petitioner has to be decided only after considering the

explanation submitted by him.

Further, this Court held in ***GUNDLA RAMA MURTHY'***s case that initiation of proceedings under Section 6-A of the Act, by itself cannot entail in automatic suspension of the authorization and that the appointing authority has to apply its mind, independently, to the facts of the case. The same applies to the case on hand.

Hence, the writ petition is disposed of setting aside the order of suspension passed against the petitioner and that the petitioner shall be entitled to continue as fair price shop dealer. It is, however, made clear that this order shall be without prejudice to the proceedings that are said to have been initiated against the petitioner under Section 6-A of the Act, or those that may be initiated by the 1st respondent for cancellation of the dealership. No order as to costs.

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L.NARASIMHA REDDY, J

Dated : 20th December, 2004

Note: Office to furnish copy

In three days.

(B/o.)

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To

1 The Revenue Divisional Officer, Visakhapatnam
2 The Mandal Revenue Officer, Anakapalli, Visakhapatnam

3 2 CCs to the G.P. for Civil Supplies, High Court of A.P., Hyderabad (OUT).

4 2 CD copies